We accordingly convicted the accused as charged and sentenced him to death.

Convicted and sentenced accordingly.

Solicitors: *Toh, Tan & Chow.*

RE MOHAMED SALEEM ISMAIL

[O.C.J. (Lai Kew Chai J.) July 14, 1987]

[Singapore – Originating Motion No. 4 of 1986]

Immigration – Application for long term social visit or special pass for pregnant wife – Special circumstances of case – Whether Controller of Immigration failed to exercise discretion judicially – Claim of right to equal protection under Article 12 of Constitution – Application dismissed by court – Immigration Act (Cap. 133, 1985 Ed.), s.10(1).

Constitutional Law – Application for long term social visit or special pass for pregnant wife turned down – Special circumstances of case – Whether art. 123(2) of Constitution infringed – Constitution of Singapore, art. 123(2).

The applicant at all material times was a citizen of Singapore by birth and was gainfully employed as a butcher earning $900 p.m. In July 1984 he married his wife who in September 1984 entered Singapore and was allowed to remain in Singapore on a Pass issued under regulation 14(3) of the Immigration Regulations, 1972 renewable at the expiry of every month. The Pass was renewed until October the following year when she was given a written notice on October 4, 1985 to leave Singapore by October 20, 1985.

Her solicitors appealed to the Minister for Home Affairs to grant her "further extension to remain in Singapore for a period deemed appropriate under the circumstances herein before stated." Those circumstances were that the applicant's wife was in an advanced stage of pregnancy, that the applicant for reasons of having to perform national reservist training was unable to accompany her on a flight to India and to help arrange for her stay in India and that, in any case, she could not for medical reasons undertake the air journey to India.

The Ministry of Home Affairs replied that the applicant's wife would "be allowed to stay here on compassionate ground until she (had) delivered her child." However, the Ministry made it clear that thereafter, "no further extension of stay would be granted."

A daughter was born to the couple in December 1985. The Controller of Immigration refused any further extension of the stay.

The applicant then sought from the High Court in exercise of its supervisory jurisdiction an order of mandamus directed to the Controller of Immigration requiring him to review his decision made in the exercise of his statutory discretion in refusing the written requests of the applicant's wife, an Indian national and holder of Indian Passport, for a long term social visit or a special pass to remain in Singapore till she was granted permanent residence. In the alternative, the applicant sought a declaration "that the applicant's wife is entitled to remain in Singapore on a social visit pass for two years in order not to deprive her of an opportunity to apply for permanent residence as a spouse of a citizen of Singapore under Article 123(2) of the Constitution of Singapore."

Held, dismissing the application: (1) in the exercise of the High Court's supervisory jurisdiction over inferior tribunals including administrative officers exercising judicial or quasi judicial functions under a statute or subsidiary legislation the High Court is supervising and not reviewing; the High Court in its supervisory capacity cannot substitute its own views for those of the tribunal or officer which or who had been statutorily entrusted to make the decision;

(2) the fact that a foreigner is not a member of the prohibited classes or an undesirable immigrant under the immigration legislation does not make the person automatically eligible for entry and/or residence in the Republic;

(3) there is no conflict between Article 123(2) of the Constitution and the Immigration Act. There is no basis for the argument that the Constitution permits a foreign woman who is married to a Singapore citizen to stay here for at least two years so that she can apply for citizenship.

The principle in *Andrew s/o Thamboosamy* v. *Superintendant of Pudu Prisons, Kuala Lumpur*[6] applied.

Cases referred to:

(1) *Rex* v. *Nat Bell Liquors Ltd.* [1922] 2 A.C. 128.
(2) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147, 195.
(3) *Tanjong Jaga Sdn. Bhd.* v. *Minister of Labour and Manpower & Anor.* [1987] 1 M.L.J. 124, 127.
(4) *Khawaja* v. *Secretary of State* [1983] 1 All E.R. 765; [1984] A.C. 74.
(5) *Re Meenal w/o Muniyandi* [1980] 2 M.L.J. 299.
(6) *Andrew s/o Thamboosamy* v. *Superintendant of Pudu Prisons, Kuala Lumpur* [1976] 2 M.L.J. 156.

ORIGINATING MOTION.

Nathan Isaac (*Thangavellu* with him) for the applicant.

S. Tiwari (Senior State Counsel) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J.: By this originating motion the applicant, a citizen of Singapore is seeking from the High Court in exercise of its supervisory jurisdiction an order of mandamus directed to the Controller of Immigration requiring him to review his decision made in the exercise of his statutory discretion in refusing the written requests of the

applicant's wife, Pattima Bibi, an Indian national and holder of Indian Passport, for a long term social visit or a special pass to remain in Singapore till she is granted permanent residence.

Anticipating that he might have insurmountable difficulties in asking for a mandamus, there being no public duty on the part of the Controller of Immigration to issue a long term visit pass, learned counsel for the applicant sought, in the alternative, a declaration

"that the applicant's wife is entitled to remain in Singapore on a social visit pass for two years in order not to deprive her of an opportunity to apply for permanent residence as a spouse of a citizen of Singapore under Article 123(2) of the Constitution of Singapore."

There were initially two grounds stated in the statement filed under Order 53 rule 1(2) of The Rules of The Supreme Court 1970 in support of the reliefs sought. First, it was alleged that the Controller of Immigration had totally failed to consider or had insufficiently considered the special circumstances. I shall return to these circumstances later in this judgment. Secondly, it was contended that the Controller of Immigration had failed to exercise his discretion judicially seeing that the applicant's wife was neither within the prohibited class of persons nor an undesirable person under the Immigration Act, Cap. 133 or the Rules and Regulations made thereunder.

In the course of arguments, learned counsel for the applicant raised two further grounds in respect of which he prayed in aid two articles of our Constitution. In referring to Article 123(2) of the Constitution which provides that "any woman who is married to a citizen of Singapore may, ... be registered as a citizen of Singapore" if she satisfies the Government of certain requirements the applicant claimed as the third ground that his wife would have achieved the criteria for citizenship but for the refusal of the Controller of Immigration which would inevitably have the effect of depriving his wife the opportunity to satisfy Article 123(2) of the Constitution. Fourthly, the applicant claimed that his right to equal protection of the law under Article 12 of the Constitution was infringed. The applicant asserted that by reason of the failure of the Controller of Immigration to state the criteria under which foreign wives of citizens of Singapore would be granted permanent residence he had found himself in such a state of uncertainty that he felt he was discriminated against. These submissions will be considered after I have set out briefly the facts of this case.

The applicant at all material times was a citizen of Singapore by birth and was gainfully employed as a butcher earning $900 p.m. all told. In July 1984 he married his wife who in September 1984 entered Singapore and was allowed to remain in Singapore on a Pass issued under regulation 14(3) of The Immigration Regulations, 1972 renewable at the expiry of every month. The Pass was renewed until October the following year when she was given a written notice on October 4, 1985 to leave Singapore by October 20, 1985. Her solicitors appealed to the Minister for Home Affairs to grant her "further extension to remain in Singapore for a period deemed appropriate under the circumstances hereinbefore stated." Those circumstances were that the applicant's wife was in an advanced stage of pregnancy, that the applicant for reasons of having to perform national reservist training was unable to accompany her on a flight to India and to help arrange for her stay in India and that, in any case, she could not for medical reasons undertake the air journey to India. It should be observed that there was no indication whatsoever that the applicant's wife should be given permanent residence with a view to her acquiring Singapore citizenship. The Ministry of Home Affairs in due course replied that the applicant's wife would "be allowed to stay here on compassionate ground until she (had) delivered her child." However, the Ministry made it clear that thereafter, "no further extension of stay would be granted."

A daughter was born to the couple in December 1985. The Controller of Immigration as indicated earlier firmly refused any further extension of the stay. And these proceedings were brought for the reliefs I had earlier mentioned.

I now consider the four grounds relied upon by the applicant. In connection with the first ground, the applicant pointed to his personal circumstances, the fact of his marriage, the birth of their daughter, the pain of separation and his feeling that he was discriminated against as he thought he was not "getting the equal protection of the law accorded to all citizens who are married to foreign wives." The last matter, it should be noted, had become a separate ground, that is, the fourth and last ground. In an affidavit filed by the Assistant Controller of Immigration, Phua Ah Kok, it was confirmed that the Controller of Immigration had taken all the matters referred to into consideration before he refused any extension of the stay. In considering this ground, I must stress the obvious because it bears repetition: in the exercise

of the High Court's supervisory jurisdiction over inferior tribunals including administrative officers exercising judicial or quasi-judicial functions under a statute or subsidiary legislation the High Court is supervising and not reviewing; the High Court in its supervisory capacity cannot substitute its own views for those of the tribunal or officer which or who had been statutorily entrusted to make the decision.

That supervision was elaborated in *Rex* v. *Nat Bell Liquors Ltd.*[1] in the following passage at p.156 cited with approval in the famous case of *Anisminic Ltd.* v. *Foreign Compensation Commission*[2] by Lord Pearce:

"That supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise."

The scope of judicial review is put in another way by Abdoolcader S.C.J. in *Tanjong Jaga Sdn. Bhd.* v. *Minister of Labour and Manpower & Anor.*:[3]

"It is of considerable significance to bear in mind that judicial review is of the hearing and not of the decision. The House of Lords firmly restated this principle in *Chief Constable of the North Wales Police* v. *Evans* [1982] 1 W.L.R. 1155 in holding that judicial review is concerned not with the decision but with the decision-making process, and that unless that restriction on the power of the court is observed the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power. This exposition was cited with approval by Lord Fraser of Tullybelton in the House of Lords in *Council of Civil Service Unions and Others* v. *Minister for the Civil Service* [1985] 1 A.C. 394 (at p.401)."

On the facts bearing on the first ground, I cannot say at all that the applicant has made good the first ground such that there should be judicial review on the principles I have set out. Accordingly, I must reject the first ground.

As regards the second ground, paragraph 9 of Phua Ah Kok's affidavit states that "the fact that a foreigner is not a member of the prohibited classes or an undesirable immigrant under the immigration legislation does not make the person automatically eligible for entry and/or residence in the Republic. Such entry and/or residence is based on prevailing immigration policy bearing in mind the need to safeguard the rights and interests of the vast majority of Singaporeans." This, in my view, is a complete answer to the second ground.

The third ground of the application was developed along the following lines. By Article 123(2) of the Constitution any woman who is married to a citizen of Singapore "*may* be registered as a citizen of Singapore" if she continues to reside in Singapore for two years preceding the date of the application for citizenship, if she proves that she permanently intends to reside in Singapore and that she is of good character. It was alleged by the applicant that by reason of the Controller's refusal and intervention, his wife would be denied the opportunity of fulfilling the criteria for citizenship and that in that sense the Controller was acting contrary to Article 123(2) of the Constitution and *Khawaja* v. *Secretary of State*[4] was relied on. In reply learned Senior State Counsel, Mr. S. Tiwari, observed that Article 123(2) in terms confers on the Government a discretion whether or not to confer citizenship even though the conditions-precedent were fulfilled. There may be a host of other factors which the Government may have to bear in mind. As for *Khawaja's* case, it was pointed out that the issue in that case was the scope of judicial review where an immigration officer had to determine as a "precedent fact" whether a person was an "illegal immigrant." The case established that where the exercise of a power depended on the establishment of an objective fact the court can decide whether the precedent requirements had been satisfied. That is plainly not the situation in our case. For that reason it is different from the instant case and it is of no assistance to the applicant. To decide otherwise would be doubly untenable having regard to the provisions of the Immigration Act, Cap. 133 which by section 10(1) stipulate in effect that a foreigner may not enter Singapore unless he is authorised to do so by the Controller of Immigration and he may issue different passes under the regulations of the Immigration Regulations, 1972.

There is no conflict between Article 123(2) of the Constitution and the Immigration Act. Sections 16 and 17(d) of the Third Schedule of the Constitution make reference to the Immigration Act. The former section indicates the period of absence from Singapore which will not be treated as residence for citizenship purposes. And the latter affirms that temporary residence in Singapore on the basis of a Pass will not be taken into account for citizenship purposes, save with the consent of the Minister. Accordingly, there is no basis for the argument that the Constitution permits a foreign woman who is married to a Singapore citizen to stay here for at least two years so that she can apply for citizenship. In *re Meenal*

w/o Muniyandi[5], a Malaysian case dealing with identical provisions with those of our Immigration Act, a wife of a citizen lost her right of permanent residence. She later returned to Malaysia on a pass. It was held that the wife was not entitled as of right to an entry permit to enter or remain in Malaysia by reason solely of the fact that her husband was a citizen. This case also recognised the public policy element: see pp. 302 H-I and 303 A-D which in our legislation finds expression in section 4 of the Immigration Act under which the Minister for Home Affairs is empowered to issue directions to the Controller of Immigration in relation to matters which affect the immigration policy of Singapore.

I now turn to the complaint of the applicant that in this case he has not been accorded equality and equal protection of the law. The facts, however, are these. Many foreign wives of citizens of Singapore have not been granted passes to enter and remain in Singapore. According to the affidavit of Phua Ah Kok the Government's policy on the grant of permanent residence to all foreigners, including foreign wives of citizens of Singapore, is strict in view of Singapore's small land area and limited resources. This court was told that from 1973 to 1983 27,199 applications for permanent residence were received from wives of citizens of Singapore. Of these 20,452 applications were approved.

The applicant in *Meenal's* case also complained that her husband was discriminated against contrary to Article 8 of the Malaysian Constitution which is equivalent to our Article 12. It was, not unexpectedly, in view of its untenability given a short shrift and was described as "too far-fetched": see p. 302 F-H rhc.

In conclusion, I want to set out the attitude of the courts when dealing with immigration litigation of the nature before me. I respectfully adopt what was said by the then Federal Court of Malaysia in *Andrew s/o Thamboosamy* v. *Superintendent of Pudu Prisons, Kuala Lumpur*[6] per Tun Suffian L.P. (as he then was) at p. 158 D/E to F/G 1hc:-

"Government is the most powerful body in the country and the court should be vigilant to see that Government does not exceed its power when dealing with individuals. But at the same time we are of the opinion that the problem of dealing with illegal immigrants is a matter of public policy to be decided by Parliament and by the Executive, that in this matter the proper authority for enacting the necessary legislation is Parliament and that if the Government exercises a power conferred on it by Parliament and keeps within the law, then the duty of the court is quite clear; the court should simply apply the law, no matter how harsh its effect may be on the immigrant. His remedy is then not judicial, but political and administrative."

For these reasons the application is dismissed with costs.

Application dismissed.

Solicitors: *Nathan Isaac & Co.*

J. ANNATHURAI v. ATTORNEY-GENERAL

[O.C.J. (Chua J.) July 15, 1987]
[Singapore – Suit No. 817 of 1983]

Constitutional Law – Citizenship – Person born in Singapore – Termination of citizenship – Similar powers for – Authority has discretion to choose – Application for Singapore citizenship – Applicant's voluntary exercise of rights of foreign citizenship – Application for Singapore citizenship disallowed – Constitution of Singapore, arts. 133, 134 & 135.

Citizenship – Termination of – Person born in Singapore – Voluntary exercise of rights of foreign citizenship – Application for Singapore citizenship disallowed.

The plaintiff in this case was born in Singapore on October 15, 1952. He attended a primary school in Singapore. His parents, who were born outside Singapore and came to Singapore in the forties, were British Subjects and became Singapore citizens by registration in 1958, after the passing of the Singapore Citizenship Ordinance 1957. By section 4 of the said Act, the plaintiff became a citizen of Singapore by birth.

In 1964 Singapore then was part of Malaysia. The plaintiff and the whole family applied for and were granted in Singapore Malaysian Provisional Passports which were valid for one year. The family left for India and arrived there on March 19, 1964. The plaintiff continued his education at Chidambaram.

In March 1970 the plaintiff completed his secondary school education. He then applied for a Singapore passport from the Malaysian High Commission in Madras but his application was rejected on April 11, 1970, and he was advised to apply for a Certificate of Status instead. The plaintiff's Secondary School Leaving Certificate described him as an Indian National.

On May 7, 1975, the plaintiff obtained an Indian passport by representing to the authorities in India that he was born in India. The plaintiff entered Singapore on his Indian passport in the same year and remained in Singapore for a period of three months during which period he